IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

OP.No. 14968 of 1999(F)

PETITIONER:

THE VISITATION CONGREGATION,
KALLAR, HOSDURG TALUK,
KASARGOD, REPRESENTED BY IT ASSISTANT
SUPERIOR GENERAL, SR.BIBIANA.

BY ADV. SRI.JOSEPH MARKOSE
SRI.THOMAS VELLAPPALLY

RESPONDENTS:
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1. **STATE OF KERALA,**
TAXES (H) DEPARTMENT,
THIRUVANANTHAPURAM, REPRESENTED BY THE
PRINCIPAL SECRETARY, GOVERNMENT OF KERALA.

2. **THE PRINCIPAL SECRETARY,**
GOVERNMENT OF KERALA,
(TAXES) DEPARTMENT, THIRUVANANTHAPURAM.

3. **THE TAHSILDAR, HOSDURG TALUK,**
HOSDURG.

BY SR.GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.149681999 F

ORDER ON C.M.P.NO.24168/1999 IN O.P.NO.14968/1999 F

DISMISSED

10/04/2007 **SD/-K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF MEMORANDUM OF ASSOCIATION OF THE CHARITABLE SOCIETY.**

EXT.P2; **COPY OF CERTIFICATE REGARDING REGISTRATION OF THE SOCIETY.**

EXT.P3: **COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNTS FOR THE YEAR ENDING 31/03/1997.**

EXT.P4: **COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNTS FOR THE YEAR ENDING 31/03/1998.**

EXT.P5: **COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNTS FOR THE YEAR ENDING 31/03/1999.**

EXT.P6: **COPY OF JUDGMENT DTD. 16/03/98 IN O.P.3457 OF 1998 OF THE HON'BLE HIGH COURT OF KERALA.**

EXT.P7: **COPY OF AFFIDAVIT DTD. 7/04/1999 BY THE PETITIONER SUBMITTED BEFORE THE 2ND RESPONDENT.**

EXT.P8: **COPY OF ORDER DTD. 21/05/99 BY THE 1ST RESPONDENT.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

O.P. NO.14968 OF 1999-F

JUDGMENT

The petitioner has constructed a building. According to it, the said building is used principally for charitable and/or educational purposes. So, exemption from payment of building tax was sought. The matter was referred to the Government. The Government considered the matter and issued Ext.P8 communication, which reads as follows:

> "I am directed to invite your attention to your representation cited and to inform you that your request for exempting the building in R.S.No.123/1B of Kallar Village of Hosdurg Taluk under the Kerala Building Tax Act, 1975 has been examined in detail with reference to the records and your statements at the time of hearing on 8.4.1999. It is found that the building is used as a residential hostel of Rajapuram College and it is let out on monthly rent. It cannot therefore be considered as a building principally used for religious, charitable or educational purposes. The building is not eligible for exemption under Section 3(1)(b) of the Kerala Building Tax Act, 1975. Your claim for exemption from payment of building tax to the building in question is hereby rejected."

This Original Petition was filed, challenging Ext.P8 and seeking consequential reliefs.

2. It is not in dispute that the petitioner is using the building as a

residential hostel for the students of a nearby college. It is also collecting rent from the students. According to the petitioner, that income is used for charitable purposes. The balance sheet of the organisation would show that it does not make any surplus and the income is not sufficient for running the institution. It is also submitted that since the building is occupied by the students, it should be treated as a building used principally for educational purposes. On the above grounds, the petitioner seeks exemption from payment of the building tax and also prays for quashing Ext.P8.

3. I heard the learned Government Pleader for the respondents also. The building should be used for religious, charitable or educational purposes, to claim exemption. The income therefrom even if used for charitable purposes, the same will not qualify the building for exemption. This point is squarely covered by the decision of this Court in **Medical Trust Hospital v. State of Kerala** [2004(2) KLT 139]. The said decision was affirmed by the Division Bench of this Court and also the Apex Court. The building shall be treated as being used for educational purposes, if it is part and parcel of an educational institution. But, it is not in dispute that the petitioner is not running the college and therefore, even if students are accommodated, the same cannot be treated as a college hostel. So, the claim

made, relying on the ground of user of the building for educational purposes, also cannot be accepted.

In the result, the original petition fails and it is dismissed.

10th April, 2007. K.BALAKRISHNAN NAIR, JUDGE

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K.BALAKRISHNAN NAIR,J.

O.P. NO.14968/1999-F

JUDGMENT

10.4.2007